

ART. IV.—*The Conjugal Condition of the People of Victoria, considered in relation to Laws of Divorce.*

[Read before the Royal Society, 16th July, 1860.]

A CONSEQUENCE of progress in speculative science, and one which shows how circumscribed are the views of the most ingenious—by how little any man can outstrip his generation—is that new investigations in one direction lead to the reopening of inquiry in others. Matters which, it might be supposed, had long since been viewed in every possible light, and thoroughly exhausted, are rendered capable of being presented in novel aspects, or in connexion with associations not previously noticed, calling upon us to review conclusions, and subject them to new tests. Thus inquiry into the economical condition of nations, though its object is material, inevitably turns upon the moral and psychological, because it is found that the production of wealth is powerfully affected by institutions, habits, customs, and even by the principles of human nature variously developed. Social science, which is so rapidly rising to importance, may be said to have arisen out of this connexion. Not merely from the sentiment of benevolence does the social economist propose to enlighten the ignorant, but because the more gentle any man is, the better producer of wealth he is found to be; and because it is believed that ignorance is productive of poverty and crime, which in their turn are burdensome and oppressive; not from the instinct of a charitable heart is he prompted to improve the habitations of the poor, to cleanse the haunts of vice, and to let the sun into the gloomy dwellings of the miserable, but because disease impoverishes the community, by disabling the strong arm of him who had heretofore kept a wife from the workhouse, and children from the corrupting patronage of the receivers of stolen goods; because premature death deprives society of many of its most valuable contributors to industrial progress before they have discharged the cost of bringing them to man's estate. So long as it was supposed that learning made the poor man discontented, and unfit for daily toil, or so long as it was supposed that death removed consumers rather than producers, so long were

schools for the poor, athenæums, and mechanics' institutes looked upon with coldness, and hospitals left to the care of the religious and tender-hearted. What the charitable and sympathising did for the sake of the poor sufferer—for the individual—the social economist proposes to do for the good of society at large.

To the recognition of the fact that many of the phenomena observable in the comparatively unequal distribution of riches amongst the population of different countries, or in the same country at different periods, are attributable to their peculiar institutions and usages, are we indebted for the more extended statistical inquiries which have of late years been made, and amongst others for that relating to the Conjugal Condition of nations; and by the results which are obtained in the latter investigation, or, more correctly speaking, by viewing these results statistically, we are led into a series of reflections, and brought to draw deductions which would scarcely occur to our minds, if we were insensible to these relations. It is true that we do not require statistical facts to perceive the immense consequences of monogamy as compared with polygamy, or to understand that they could scarcely exist under similar political systems. The most careless thinker must at a glance perceive the vastness of the difference between a system which makes one half of a population little better than the slaves of the other half, and one which aims at making woman the social equal and partner of man, interested in his fortunes, the manager of his household, and the principal instructor and moral trainer of his children. Neither are any figures requisite to impress upon the mind the prodigious social change which would result from such a relation of the sexes as would follow the adoption of the principle of a Rousseau, who would throw the support and instruction of the child upon the State; supplanting by the foundling hospital the *family*, or self government localized to the minutest degree; abolishing at once both parental and filial ties and duties; educating the children of a country by one rule common to all, through the hard instrumentality of salaried masters and matrons, rigid disciplinarians, on whose part manifestations of affection would be partiality and weakness; replacing individuality by uniformity of character, and taking from the parent the inspiriting desire of transmitting his name, wealth, and honours to successors, and removing the necessity of even working for them. When we recollect that from his instructors a man has obtained little more than precepts, but

that those qualities which are, as it were, engrafted into his soul, and which, form his character, are derived from those in whose company he constantly is; and, therefore, in most instances from his family, we can guess at the magnitude of the revolution which would follow from the overthrow of our present system by the substitution of one so different. But when we look more minutely into the matter, we perceive that monogamy admits of variations, productive of very serious consequences, some of which are not far short of those which would flow from the extremes referred to. For example, the law may allow a man to have but one legal wife, but nevertheless it may sanction what in effect would amount in practice to polygamy; or it may, while confining the man to one wife at a time, admit of an unlimited number in succession, by giving the husband the power to divorce on the lightest grounds, as became the usage in Rome in the latter period of the Republic, and during the Empire; a usage, it may be remarked, to which probably more than to any other circumstance, may be attributed that decline in the population of central Italy, which ultimately led to the removal of the seat of Government to the shores of the Bosphorus—the virtual extinction of the Empire of Rome.

Of the mischievous consequences of too great a laxity of the marriage contract, Augustus was conscious, and attempted a return towards that system under which a small colony grew into a colonizing empire; but, as we are informed by Gibbon, “once, and once only, he experienced a sincere and strenuous opposition. His subjects had resigned all political liberty; they defended the freedom of domestic life. A law which enforced the obligation and strengthened the bonds of marriage, was clamorously rejected. Propertius, in the arms of Delia, applauded the victory of licentious love, and the project of reform was suspended till a new and more tractable generation had arisen in the world.”*

The measure referred to in this passage was the *Lex Julia* and *Papia Poppæa*, designed to discourage celibacy, and encourage marriage, with a view to the promotion of population; and may have done what all the legions on the Rhine and the Danube failed to do—protected Italy from the iron heel of the barbarian. Unfortunately, however, the efforts to set limitations to the liberty of divorce signally failed, so much

* Gibbon, Chapter xliv.

so that "Jerome saw at Rome (A.D. 321 to 340) a triumphant husband bury his twenty-first wife;* and so infatuated were these unhappy people in their desire for licentious indulgence, that the successor of Justinian had, we are told, to yield to the prayers of his unhappy subjects, and restore the liberty of divorce by mutual consent.†

To a state of things pregnant with so many evils, and which irretrievably weakened the vast domains of the Cæsars, England appeared to be verging from the times of Charles II.; but fortunately the effects of licentiousness were felt at a period when a legislative remedy was practicable, and the eloquence of a Fox, specious but unsound, failed to overthrow a measure‡ which divested the marriage ceremony of the disgraceful associations which are attendant more or less upon all that is clandestine—lifting it from a mere verbal promise that might be denied to suit convenience, faithlessness, or caprice, into a solemn public contract. To this reform we cannot refuse to attribute a great improvement in the character of parents. It was, as it were, a restoration of "the family"—a term to the Anglo-Saxon mind fraught with meaning—and the health, education, and career of the child became more and more an object of solicitude to parents, more united, more interested in each other's welfare, and more virtuous. The quiet enjoyment of the domestic circle succeeded to the gin-palace, the gambling table, and the "assembly room," where the woman, half wife, half mistress, endeavoured to secure her hold upon a capricious lover by blandishments and intrigue. Sober industry and thrift succeeded to habits wasteful of time, exhaustive of energies, and prodigal of earnings; and a smaller number of illegitimate children—illegitimate, perhaps, only by the father having broken his plighted faith—became a burden upon society, to add in their turn to the evils of a community to which they were bound by no tie, with which in fact their position made them at war.

But the power of the legislator to affect the social, moral, and material circumstances of the governed, through the institution of marriage, is not confined to the broad principles of measures. The minutest details are not without their influence. For instance, a law such as that of the Twelve

* Gibbon, note, Chapter xlv.

† Gibbon, Chapter xlv.

‡ Lord Hardwicke's Act, 1753.

Tables, by which a woman who lived for one year without interruption with a man as his wife, became a wife, though, at first thought, it might seem just in principle, must evidently have the effect of making such associations less disreputable, lowering the standard of female morality, and leading to the formation of illicit ties in the hope of their terminating in honesty. The same remark applies to laws such as those of Scotland, by which a marriage is held to be legally contracted merely "by habit and repute;" and, though to a less extent, it holds good in reference to an enactment by which children born out of wedlock are legitimized by subsequent marriage. Seduction, concubinage and bigamy are facilitated, if not actually encouraged, by such regulations; and libertinage, with its inevitable concomitant, celibacy, are adverse to the growth of population as well as to moral advancement. To the laws of marriage which obtain in Scotland must, in part, if not entirely, be ascribed the fact that so much smaller a proportion of the population of that country are living in the marriage state than is the case in England and Wales. Thus, while in the latter country 59 in every 100 women aged 20 and upwards are returned as wives, but 49 in every 100 of the same age in Scotland are married, that is, one-sixth less — an immense difference for contiguous parts of the same kingdom. The difference in the conjugal condition of England and Scotland, or, to express it in another form, the effect of the disparity in the proportion living in a state of celibacy, namely as 30 males (England and Wales) to 35 (Scotland), is manifested in the unequal rate of increase of the population north and south of the Tweed*.

While on the subject of celibacy, which, it is to be recollected, is increased by the late age at which people marry, as well as by their not marrying at all, it may be remarked that another of the many ways in which marriage laws may act upon population, and upon the morals of the people, is by advancing the age of majority. This in France is four years later than in England, and has no doubt much retarded the progress of population in that country, and moreover in all probability has proved a potent agent in producing that state of things of which so saddening a picture is presented by Michelet and others; the great multitude of young women in France, who are a prey to poverty and drudgery, struggling

* Since 1801 the population of Scotland has increased but 74 per cent., while that of England and Wales has increased 97 per cent.

to maintain the dignity of their sex, in an isolation not consonant with human nature. For, be it remembered, the later in life men marry, the greater, as a general rule, is the disparity between the ages of man and wife; and the greater the comparative youthfulness of the wives, the greater the number of females who never can be married, who sink into the grave victims of hard work or despondency, and but too often of vice.

There is no detail in any law so trifling as to be without a result, though we may not immediately be able to trace it; and no change can be made in so surpassingly important an institution as that of marriage, without operating upon the social, moral, and material condition of the people.

Having said so much of the importance of a thorough comprehension of all that is directly and collaterally involved in laws of marriage and divorce, and of the recurring circumstances which tend to revive the interest, and justify the re-investigation of subjects so often and so ably discussed, the peculiar situation of our own colony may fitly be entered upon.

Attention has been directed to the fact, that in tracing up the causes which influence the progress of population, in examining the varied relations of the sexes in different places, and in devising those changes in the laws of marriage and divorce which are rendered necessary by alterations in the circumstances of the people, a knowledge of their conjugal condition has of late years been esteemed of the highest importance; and it may be added that, if such be the case in older and more settled nations, it ought to be much more so in a country where the population is so small in proportion to the extent and capabilities of the territory, and where so remarkable a sexual disparity occurs. Indeed, it may safely be alleged, that when these and similar questions are under consideration, our conjugal condition should be kept constantly in view; inasmuch as our statistics disclose a state of things more startling in many respects than may have been anticipated, and ranging very widely from the normal condition of nations, as may be seen by a comparison of the figures exhibiting our condition with the corresponding ones for Great Britain, a country which may be taken as presenting a very near approach to the natural order of things.

Great Britain, at the time of the census of 1851, contained 3,391,271 husbands, 3,461,524 wives, 382,969 widowers, 795,590 widows, and the bachelors and spinsters, taking persons of the age of 20 years and upwards, amounted to

1,689,116 and 1,767,194 respectively. The corresponding numbers to these in Victoria* are 70,051 husbands, 61,955 wives, 5,147 widowers, and 3,966 widows, 88,355 bachelors, and 12,545 spinsters, both of the age of 20 years and upwards.

The figures which are representative of the two countries are, therefore, most dissimilar. In Great Britain there are more married women than married men; in this colony the married men are more numerous, outnumbering the wives in the proportion of 113 to 100. In the former-mentioned country, the widows are more than double the number of widowers; while in the latter, there are nearly 130 widowers for every 100 widows. In Great Britain the bachelors are only half as numerous as the married men, whereas in Victoria there are 126 bachelors of the age of 20 and upwards for every 100 husbands. But the greatest disparity is in the proportion of spinsters to bachelors. In Great Britain, the unmarried women are in excess of the unmarried men; but in this colony the figures given above show that, comparing equal ages, there are rather more than seven bachelors for every spinster—the excess of the former being no less than 75,810. But even viewing our circumstances in this respect in a less unfavourable light, and contrasting the number of bachelors who have attained the age of majority, with the number of unmarried females of the age of fifteen years and upwards, we find the excess to be 61,859—that there are but 22,082 of the latter to 83,941 of the former. Thus, if our social habits were to be subjected to such a disorganisation as would result from all those females who are performing the duties of daughter, sister, housekeeper, domestic or fram servant, and similar indispensable offices, abandoning their positions and entering into the married state, only 26 per cent. of the bachelors would be provided with wives, leaving 74 out of every 100 of them, besides the greater part of the 5147 widowers, who would find it impossible to obtain wives within the colony.

From the foregoing statement it will be perceived that the effective disparity of the numbers of the two sexes† in this country is but feebly conveyed by a comparison of the gross numbers of males and females of all ages, because the juvenile population under the age of sixteen years, which forms 31

* In all the figures respecting Victoria in these pages the Chinese are excluded.

† 160 males for 100 females.

per cent. of the inhabitants, presents no sexual disproportion of any consequence*; and that even a comparison of the adults of either sex, though the disparity in that case is as 2 to 1, does not enable us to realise to the full extent the unsatisfactoriness of our position. It is by examining our situation in a conjugal point of view that we become thoroughly impressed with the deficiency of adult females as compared with the wants of the colony, and learn how very small a proportion of them is suffered to remain unmarried.

In Victoria the unmarried women of the age of twenty and upwards are to the married women of all ages only in the proportion of 1 to 5; in Great Britain the proportion is as 1 to 2. This difference between the circumstances of the two countries is undoubtedly, to a great extent, owing to the eagerness with which the hands of young women are sought in marriage in this colony; and the evidence which our census tables present on this point would apparently warrant the conclusion, that if social circumstances less intervened to retard the intercourse of the unmarried of the two sexes, the number of spinsters would bear even a much smaller proportion to the number of married women than it does. In support of this position, the returns furnish two-fold evidence, namely, the difficulty which the men experience in obtaining wives, and the comparative ease with which the young women obtain husbands. Of this the following facts are sufficiently illustrative.

In Victoria the proportions of married among the population of the age of twenty and upwards are, in the males 42 in 100, and in the females 78 in 100; while in Great Britain the proportions are 62 in 100 males, and 57 in 100 females.

At the age-period of twenty to forty, the proportion of married in this colony is 38 in 100 males, and 78 in 100 females. The proportional numbers corresponding with these are, in Great Britain 52 in 100 males, and 55 in 100 females.

At the age-period of forty to sixty, the proportions of married here are 61 in 100 males, and 81 in 100 females; and in England, Wales, and Scotland the proportion is 79 in 100 men, and 70 in 100 women.

The inferences to be drawn from these figures, so far

* Excluding Chinese and Aborigines, the number of males were 237,743 and of females 145,925. The numbers under 16 years of age were, male, 60,552, and females 59,614; and the numbers of the age of 16 and upwards were, males 177,191, and females 86,311.

as the men are concerned, are that, but for the great difficulty of procuring wives, there would at the respective ages indicated be 62 married instead of 42, 52 instead of 38, and 79 instead of 61; and that, but for the unusually favorable position in which the women are placed, there would be but 57 and 55 of them married where there are 78, and only 70 where there are 81. It may further be added that, as regards the men, these figures cannot be considered as fully representing their difficulty in procuring wives, when the fact is taken into account that the laboring population of Victoria is better circumstanced, so far as the ability to support a family is concerned, than the mass of the inhabitants of almost any other country; and it is a universally recognised principle, that in all old countries pressure of population against the means of subsistence acts as a check upon marriage, or causes a very large number to postpone the age at which they would, under less unfavorable circumstances, marry.

Pursuing further the facts illustrative of the deficiency of adult females, as compared with the demand for wives, we find that while the British census returns show that of the whole number of females of the age of fifteen to twenty but $2\frac{1}{2}$ per cent. are married, the inducements to early marriage, as regards our female population, are such that there are over $16\frac{1}{2}$ per cent. married at that age. Of the number of females living at the age-period twenty to twenty-five, the proportion married in Great Britain is but 30 per cent., while in Victoria it is nearly 63 per cent. At the next period (twenty-five to thirty) there are 82 per cent. married in Victoria, and 57 per cent. only in Great Britain. At the age-period thirty to thirty-five the proportion in Great Britain rises to 70, and in this country is 88. So much for the proportions of the married.

As regards the proportions of the unmarried at different periods of age, these are, of course, the inverse of the married. Of the male population at the age twenty to forty, there are 60 in 100 unmarried in Victoria, and only 46 in 100 are unmarried in Great Britain; at the period forty to sixty there are 30 unmarried here, and 12 there. Of the female population the proportion in this colony of the unmarried at the age twenty to forty is only 19 per cent., and is in Great Britain 42 per cent. Of the age forty to sixty there are little more than 4 in 100 unmarried in Victoria, against 14 in 100 in Great Britain.

Such are the leading features of the difference between the

average conjugal condition of this colony and that of Great Britain; but it is not merely the average of a country which is to be taken into account in cases of this kind. Where social defects or difficulties have to be considered in legislation, provision has, if possible, to be made for all cases, for the worst as for the best. It is for this purpose that statistical information in detail for every political and municipal division of a country is desirable; and a great deal of all legislation, though it ostensibly has a general application to a whole country, is really designed to apply only to certain parts of it. Many enactments, though law as regards a whole territory, are practically nullities throughout the greater portion of it—being designed to meet cases which arise only amongst certain classes, or in certain branches of industry.

Passing, accordingly, from the average to the special, we find on examining the conjugal condition of the population in various localities, or rather of the principal industrial classes into which the inhabitants of Victoria have determined, that there is here a greater variety in this particular than is to be found in older countries, and that the picture presented by the colony in the aggregate is, though bad, much less unfavorable than that offered by portions of it. This remark, though applicable in a high degree to those parts where pastoral pursuits are prevalent, is intended to apply particularly to the mining population, whose circumstances are more deserving of attention, because this class is more numerous than either the manufacturing and trading, or the agricultural sections of the community, forming, as it does, 38 per cent. of the population of European origin.

Turning, in the first instance, to the circumstances of the male population of the age of twenty years and upwards, we perceive that while the proportion of husbands in the rural districts nearly corresponds with the average of the colony, being 42 in 100, and that while the proportion in the seaport towns—57 in 100—does not vary much from that prevalent in Great Britain—62 in 100—the husbands form but 35 in 100 on the gold-fields. Moreover, the excess in the number of married men above married women there, which amounts to 6,072, shows that no less than 22 per cent.* of this small pro-

* The total number of husbands was 27,632; and deducting those who could have had no wives with them, the balance left was 21,560.

portion of husbands are absentees from their homes, a circumstance, be it noted, of great moment in relation to divorce, reducing the proportion of the adult male population who are living in the married state to about 28 in 100, or less than half the proportion of Great Britain.

As regards the unmarried of the male population, aged twenty and upwards, we find that the proportion on the gold-fields amounts to 61 in every 100, while the proportion among the seaport towns' population is but 39 in 100. In Great Britain only 31 in 100 are bachelors. Supposing the ability to marry, so far as affected by the wages of labor, to be the same throughout the colony, and assuming the inclination towards the formation of domestic ties to be the same on the gold-field as in the seaport town, we cannot fail to see much privation in the great disparity between the figures 61 and 39, which represent the relative circumstances of these two sections of our population in this most important respect.

Passing to the comparative position of the females on the gold fields, we find that, of women aged twenty and upwards there is a difference of 16 per cent. between the proportions of the married there and in the seaport towns; the proportion in the former rising to the high degree of 87 in every 100, or 9 higher than the average of the colony*; and being in the latter 71 in every 100, or 7 lower than the average of the colony. The relative numbers of women living in the married state on the gold-fields of Victoria and in Great Britain†, therefore, present the enormous disparity of 30 in every 100.

Referring to the proportions of the unmarried females, it appears that of every 100 women of the age of twenty and upwards, on the gold-fields, but 9 are spinsters. This proportion is to the average of the colony as 9 to 16; to the average of the seaport towns as 9 to 21; and to the average of Great Britain as 9 to 29‡.

The insufficiency, in a conjugal point of view, of the number of adult females on the gold-fields, is manifested by the early marriage of those residing there. Of 2,823 women belonging to the age-period fifteen to twenty, no less than

* Namely, 78 in 100.

† The proportion in Great Britain is 57 in 100.

‡ The proportions are—in the colony, 16 in 100; in seaport towns, 21 in 100; in Great Britain, 29 in 100.

851 had entered into the married state. There are, therefore, more than 30 per cent. of the entire number of women living on the gold-fields of the age of fifteen and under twenty, either wives or widows. This proportion is nearly twice as high as the average for the entire colony, and is to the ratio for Great Britain as 12 to 1.

As regards the numerical deficiency of females on the gold-fields, there were at the period of the last census, 46,144 bachelors, aged twenty-one years and upwards, to 4,301 spinsters aged fifteen and upwards; that is, making a comparison with a disparity of six years between the ages of males and females, nearly 11 to 1, or an actual excess of 41,843.

Disparity between the mean ages at which men and women marry is a point of too much importance to be overlooked in discussing the conjugal condition of a people, because great inequalities in age, just as inequality in other respects, is not unfrequently a source from which disunion in married life springs. As regards this point, it may be observed that against 846 of the 851 women whom I have already noticed as having been married under twenty years of age, there were but 34 husbands belonging to the same age period. Of the age-period twenty to twenty-five there were 5,180 wives to 1973 husbands; being altogether 6926 married women to 2007 married men under twenty-five years of age. Taking the married of all ages on the gold-fields, the average age of the men appears to be thirty-five years, and of the women thirty, being a disparity of five years, or twice as great as that of Great Britain. This seems to correspond very closely with the difference between the ages of men and women about to marry, as recorded in the marriage registers of the colony, and presents a marked contrast to England and Wales, where the disparity is only one year. An average disparity of five years betokens a great number of instances of very young women being joined to men of mature years; and deducing from one disparity other disparities, we are led to infer that there are many unions of persons unsuited in rank, education, and temperament. The attractions of wealth on one side overcome objections on the other which would in ordinary circumstances be insuperable; while the difficulty of procuring suitable wives, no doubt, often leads men to selections which they would not make in more favorable positions. As an instance in support of this view, it may be mentioned that the marriage statistics show unsuitability as regards

education in the fact of 243 women signing with marks for every 100 men. The proportion in England and Wales is about 149 to 100.

These are the most prominent of the general and special facts disclosed by the Census, illustrative of the conjugal condition of this colony as contrasted with that of the mother country; and it can scarcely be considered a rash position to maintain that, if any statistics have a practical value as a guide in legislation, these are pre-eminently entitled to attentive consideration in connection with the question—Whether an experimental measure, supposed to be adapted to a country circumstanced as Great Britain is, may not, in some respects, be unsuitable to this? Uniformity in laws, though desirable in the abstract, is rendered impossible by the force of nature, by difference in climate, variety of natural productions, dissimilarity of industrial pursuits, and by the habits and sentiments engendered by varied physical and moral circumstances. It is, perhaps, sound in policy that as near an approach to uniformity as is consistent with their peculiarities should be adopted by all nations in their institutions, especially by all the divisions of the same empire; but it should also be kept in mind, that to follow blindly is not to follow wisely. Divergence, sooner or later, seems inevitable, because legislation is never ending, experience having shown that regulations well adapted to one period are sure to become inconvenient in another, and that laws imported from one community are found unsuitable to the other.

Legislation affecting the marriage state, one of the most important branches of which is that relating to the dissolution of the contract itself, if contrived barely with a view to meet the circumstances of the British Isles, and not designed to meet all cases, can scarcely be altogether applicable to Victoria. The probability that there exists a larger amount, comparatively speaking, of disunion in married life in this country than in Britain (and the daily revelations in our courts, as well as the numerous advertisements in our papers respecting wives who have deserted their homes, seem but too confirmatory of the inference deducible from our statistics—of the existence of much social derangement) points to the greater need of a measure of relief; but it also points to the greater necessity of repressive conditions being conjoined with such relief, inasmuch as numerous instances of desertion, whether on the

part of the husband or wife, suggest the existence of greater facilities, or greater inducements for so doing; and if the latter, there is the more necessity for taking precautions that the most valuable of human institutions cannot be assaulted with impunity—that the most sacred of contracts cannot be violated at the instigation of caprice, passion, or interest.

The necessity of including repressive conditions in any measure which may be enacted for this colony is most appositely illustrated by the consequences which attended too great a laxity of the divorce law in California, a country which resembles Victoria in the disproportionately small number of marriageable females, as in many other respects. Repressive measures, which have been dispensed with in other portions of the Union, have had to be resorted to in that State, “to put an end,” to use the words of an able article in a San Francisco paper, “to a disgraceful evil, which sat like an ‘old man of the mountain,’ upon the vitals of its prosperity.”

The causes of divorce, as just intimated, are not the same throughout the Union. Each of the States has its special legislation on the matter; and the laws of some are much more restrictive than others—so much so, that the legislature has to be resorted to very frequently in many of the States, in cases not provided for by the statutes. The laws of some of the States prohibit the guilty party from marrying again; but it would seem that in California a discretionary power of prohibition is given to the courts. It appears, however, that this power was but little exercised until a recent period, and the ease with which divorce could be obtained, and the permission to the divorced to re-enter the marriage state, had been found to offer temptation to numbers of profligate unmarried men to sow discord between man and wife, so as to bring about a state of things that might lead to separation. After describing the abominable means resorted to, as revealed on the divorce trials, to effect this end, and denouncing the “vile and degrading system of espionage established over the husband,” the *San Francisco Herald* thus proceeds:—“After enough of this kind of evidence has been collected to make out a case, the deluded wife is informed that there is no trouble in procuring a divorce. She is further told that our society is very facile on these points—that divorce suits are conducted *sub rosa*—that no unpleasant publicity ever accompanies them—that the divorced parties are left entirely free to satisfy their separate

inclinations afterwards. * * * The courts have manifested a disposition to put a check upon the facilities for divorce that have obtained in this city. * * * This determination is the direct and legitimate result of a greatly improved condition of public opinion. California to-day is a very different affair from California before thousands of our own children were growing up around us. The public opinion of a community of single families is a very different thing from the public opinion of a community of single, and by no means over-scrupulous, men; and within the past week two mortal blows have been struck at the very root of the monstrous social evil that so long fed like a canker on the dearest interests of our State. * * * A divorce (in Wood's case) was sought on the ground that the defendant was an habitual drunkard; but it was shown that the charge was unfounded. The defendant, like thousands of other men in the city, against whom intemperance has never been alleged, was in the habit of indulging occasionally by drinking with his friends and acquaintances. He seems to have been subjected to a vile system of espionage by the very parties who participated with him and drank wine at his expense. * * * In the case of *Buessard v. Buessard*, divorce was granted for adultery, clearly proven; but the judge ordered that the guilty party should be for ever debarred from again disgracing the sacred rite of matrimony, and mock at its obligations by assuming them. In the case of *Krueger v. Krueger*, divorce was granted for good and sufficient cause, but coupled with a like injunction. These decisions were in accordance with that of the Supreme Court in the case of *Conant v. Conant*, establishing the principle mentioned. We cite these facts in proof that Californians are fully awake to the pernicious influence of divorce suits, for which no reason exists other than in the inflamed imaginations of weak-minded or viciously disposed persons."

In this statement respecting the law of divorce in California, we have it presented to us that a preponderance of unmarried men led to an abuse of that measure; that, though in some of the other States no such great evil, comparatively speaking, had resulted from the absence of the restrictive clauses prohibiting the guilty parties from marrying again, yet in California it was found expedient to exercise this power; proving the necessity of adapting the laws to the peculiar circumstances of the country which has to be legislated for.

Most undoubtedly the circumstances of our population—at least of a large portion of it—more nearly approach the condition of the Californians than that of the inhabitants of the British Islands. Is their experience, it may be asked, altogether unworthy of our consideration?

With reference to the policy or justice of placing on the guilty a prohibition from again marrying, it is possible that cases may occur where to do so would prove a hardship, or cause a life of crime to be the sequence of a moment of guilt; but the most salutary contrivances have their drawbacks. The punishment we inflict for a small theft, hampers the progress of the reformed and hardworking man throughout his after-life, making him perhaps in the end a burden on society. The fraudulent bankrupt is refused permission ever again to enter into trade; and probably continues a rogue and a pauper for the remainder of his life. If, therefore, for a breach of the contract between merchant and merchant a severe restriction is imposed, surely it seems but consistent that a similar course should be adopted towards those who violate the most important contract which legislation can foster. It seems but a simple duty to protect the unwary from those whose unfitness to fill the position of husband or wife has been established; and it does not follow that because people are relieved from the burden of a dangerous or odious contract, that they who rendered its dissolution an act of justice, should be allowed to form a new engagement, or that the law should step in to place those who have shamelessly violated one engagement, in a position to violate a second; neither does it follow, because the injured call for a measure of relief, that the opposite extreme should be rushed into, and that, in our zeal for facilitating divorce, we should also legislate in favour of evil-doers.

Restrictions on the re-entering of guilty parties into the marriage state, similar to those to which attention has been directed, are not without other parallels. Previous to the present law of the United Kingdom, there was an order of the House of Lords that every divorce bill, on account of adultery, should contain a clause prohibiting the marriage of offending parties with each other, and this clause was maintained in one very flagrant case. The *Code Napoleon* restricted the liberty of divorce which had been introduced in the earlier revolutionary period, and amongst other restraints prohibited a woman from contracting a new marriage until the expiration of ten months from the dissolution of the

preceding. The object of this is so obvious, that it seems strange any divorce law could be without such a clause.

We have the testimony of Chancellor Kent, that in the United States adultery has been committed for the purpose of divorce; and the records of the English Divorce Court, short a time as it has been in operation, presents an instance of a wife's family having employed detectives to get up a case against a husband of blameless character, and exercising an honorable profession. If precautions against a social flaw so mischievous as these instances would indicate, are necessary in countries where people may, as a general rule, form marriages with less chances of disunion than in a country so circumstanced as this, the more desirable it is that we should set greater limitations on the liberty of divorce.

In conclusion, it may not be out of place to urge that while every reasonable effort should on the one hand be made to meliorate the conjugal condition of the people of this colony, caution on the other hand should be observed in adopting any course calculated to aggravate it—and this on economical as well as on moral grounds. Though there are men whose temperament enables them to dispense with family association and affection, the vast majority are affected by inability to enter into the marriage state. Men whose minds have not the intense occupation which such studies as theology, philosophy, science or literature can afford, or who have not entered successfully into the arena of the politically ambitious, are but too apt to supply the absence of conjugal relations by dissipation. Drunkenness, which is considered excessive in this country, is no doubt much increased by want of the occupation entailed by domestic ties. Vices cannot, unfortunately, be indulged in without companions, and those who are hurried along by them drag others into the vortex. The licentiousness of the unmarried amongst the men is not without a corresponding amount of baneful results upon the unmarried women. Every circumstance which deteriorates the moral character of a people, augments the cost of governing them, and diminishes their wealth-producing powers. Not only is time squandered, and health and energy wasted, but the position of the celibate is a bar to the successful practice of many branches of industry. The assistance of a wife to the small trader or farmer is of almost inestimable value; and though many unmarried men in this country endeavour by partnerships to overcome the drawback, many more would

gladly turn to other pursuits than those to which they are confined by the circumstances of being bachelors. Most unquestionably the moral character of our population, which should be a primary object of legislation, would be greatly improved by such an increase of the adult female population as would enable the relative proportion of the married men to be increased; and it is a question worthy of consideration whether the industrial efficiency of the existing male population may not be equally augmented by an accession of females, as by the addition of some thousands to the number of unmarried men. But be this as it may, it would be far better as regards the permanent prosperity and greatness of our country to legislate for an increase of virtue rather than for an increase of numbers; for an increase of human happiness rather than for a factitious appearance of wealth. Exports and imports, though they may be mercantile deities and have their worshippers, are not everything; and it would be well if those who would remedy excessive importation by introducing male consumers, could realise the fact that they would thereby aggravate some of our social evils; it would be well if they could recognise, with Michelet, that the aim of political economy "is not riches; even comfort is a secondary consideration, the more completely acquired when the aim is higher. The aim of political economy and all policy is *to make men*—men intelligent, benevolent, courageous, and robust. This is riches in the highest sense of the word."

APPENDIX.
Table showing, at Five Periods of Age, the proportions of Unmarried, Married, and Widowed of every 100 Males living at each of those Periods in England, and Wales, and Scotland, in the year 1851; and in Victoria, and in the Seaport Towns, Mining, and Rural Districts thereof, in the year 1857.

Years.	MALES.																	
	UNMARRIED.				HUSBANDS.				WIDOWERS.									
	Great Britain.		Victoria.		Great Britain.		Victoria.		Great Britain.		Victoria.							
	England and Wales.	Scotland.	The Colony.	The Seaport Towns.	The Gold-fields.	The Rural Districts.	England and Wales.	Scotland.	The Colony.	The Seaport Towns.	The Gold-fields.	The Rural Districts.						
All Ages	62.5	66.8	67.9	62.6	69.9	69.6	33.7	29.8	29.9	35.4	27.8	28.0	3.8	3.4	2.2	1.9	2.3	2.3
Aged 20 and upwards	30.3	35.3	54.6	39.6	61.2	53.7	62.6	58.0	42.3	57.2	35.8	42.8	7.1	6.6	3.1	3.2	2.9	3.5
15 and under 20	99.5	99.5	99.2	99.5	99.1	99.2	.4	.4	.7	.4	.8	.7	.0	.0	.0	.0	.1	.0
20 and under 40	45.3	52.0	60.6	50.5	66.3	61.5	53.1	46.5	37.9	48.0	32.2	37.2	1.6	1.5	1.4	1.4	1.5	1.3
40 and under 60	12.1	15.4	30.1	18.7	34.9	36.1	79.8	76.7	61.7	73.5	55.9	56.3	8.1	7.9	8.2	7.8	9.2	7.5
60 and under 80	8.8	10.6	27.2	16.3	31.2	33.6	64.9	65.9	48.7	60.8	41.3	43.1	26.3	23.5	24.1	22.8	27.5	23.2

APPENDIX.
Table showing, at Five Periods of Age, the proportions of Unmarried, Married, and Widowed of every 100 Females living at each of these Periods in England and Wales, and Scotland, in the year 1851; and in Victoria, and in the Seaport Towns, Mining, and Rural Districts thereof, in the year 1857.

FEMALES.

Years.	UNMARRIED.				WIVES.				WIDOWS.									
	Great Britain.		Victoria.		Great Britain.		Victoria.		Great Britain.		Victoria.							
	England and Wales.	Scotland.	The Colony.	The Seaport Towns.	The Gold-fields.	The Rural Districts.	England and Wales.	Scotland.	The Colony.	The Seaport Towns.	The Gold-fields.	The Rural Districts.						
All Ages.....	59.8	63.7	54.6	56.6	48.6	58.0	33.0	27.9	42.7	39.7	49.6	39.7	7.2	8.4	2.7	3.7	1.8	2.3
Aged 20 and upwards.....	28.3	36.1	16.7	21.7	9.3	16.4	58.7	49.1	78.2	71.5	87.3	78.9	13.0	14.8	5.1	6.8	3.3	4.7
15 and under 20	97.4	97.9	83.2	80.2	69.9	85.0	2.5	2.1	16.6	11.6	29.9	14.7	.0	.0	.2	.1	.2	.3
20 and under 40	40.9	48.2	19.2	25.1	10.2	20.5	56.3	48.4	78.5	71.9	88.1	77.4	2.8	3.3	2.3	3.0	1.7	2.1
40 and under 60	12.8	21.2	4.3	5.6	3.6	4.3	71.5	59.5	81.8	77.4	85.5	84.8	15.7	19.3	13.9	17.0	10.8	10.9
60 and under 80	11.3	20.9	4.9	5.8	7.6	3.4	43.4	32.5	44.1	36.5	44.5	54.4	45.3	46.6	50.9	57.6	47.8	42.2